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Daniel L. McConnell

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/832,718  
Filing Date: April 11, 2001  
Appellant(s): MCCONNELL ET AL.

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David G. Maire  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 16 July 2007 appealing from the Office action mailed 1 March 2004.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,326,994	Yoshimatsu	12-2001
4,817,949	Simonelli	04-1989

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### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7, 8, 12, 13 & 24-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simonelli (US Patent Number 4,817,948) in view of Yoshimatsu (US Patent Number 6,326,994).

**Claim 7, 12, 27, 29:** Simonelli teaches providing a plurality of cameras (122 & 124) at a plurality of locations (race cars in Fig 1) within an event for producing a plurality of live-action video signals. Simonelli teaches locally transmitting within the event a plurality of live-action wireless communication signals corresponding to the plurality of video signals via a respective plurality of transmitters associated with a plurality of cameras. (Fig 3) Simonelli teaches providing a plurality of attendees at the event a respective plurality of portable display units each containing multi-channel receiving device. Fig 2 shows a portable display unit for each driver. There are two video images (22 & 24). Thus the display units must have a multi-channel receiving device. The portable display units are adapted for simultaneously receiving the locally transmitted live action wireless communications directly from the transmitter (Fig 3) and for displaying images

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responsive to a live action video signal individually selected by each of the respective attendees for personal viewing only while at the event of selected images corresponding to unaltered live action views captured by the cameras.

Simonelli fails to teach that the portable display units are to be worn by the attendees at the event. Yoshimatsu teaches head mounted display units worn by the users. (Figs 6 & 7) Yoshimatsu teaches a device for giving users a 3-D image of the event. This is much more realistic. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Simonelli in view of Yoshimatsu to have a portable display unit wearable by the attendee in order to display a more realistic 3-D image.

**Claim 8, 24, 28, 32:** Simonelli teaches the invention substantially as claimed, but does not teach a stereo-optic display. There are personal display units (Fig 2) for displaying images for personal viewing by attendees. Simonelli teaches transmitting wireless communications signals corresponding to the plurality of video signals via the wireless communication system. (Fig 3) Simonelli teaches providing a pair of cameras (122 & 124) at each of the plurality of locations (i.e., on each car) at the event, but does not teach stereo-optic images.

Yoshimatsu teaches providing a pair of cameras adjacent to each other at an event to view the event from two different perspectives corresponding to a distance between two eyes of a human observer for producing a corresponding depth perceptive video signal for each camera pair. (Fig 1) Yoshimatsu also teaches providing the portable display units with two adjacent video display devices separated by the distance between

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two eyes of a human observer to displaying two different images corresponding to views of the event from the perspective of the respective cameras. (Figs 6 & 7) This provides a realistic three-dimensional image to the viewer (i.e., with true depth-perception as would be seen by the attendee from the perspective of the placement of the pair of cameras), thus increasing the viewer's sense of participation in the live event. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Simonelli to have used Yoshimatsu's stereo-optic signals and a stereo-optic video display device to provide a realistic three-dimensional image to the viewer, thus increasing the viewer's sense of participation in the live event.

**Claim 13:** Yoshimatsu teaches that the personal display unit is a headset for supporting the receiving device and the video display device. (Col 6, 33-40)

**Claims 25, 30:** Simonelli teaches cameras in each car (i.e., a plurality of pairs of cameras) and a transmitter (i.e., the telemetry package) connected to the cameras for transmitting a view from the perspective of the video camera. (Fig 3) The viewer may choose which of the cameras to view (i.e., the viewer may select which car to "ride").

**Claims 26, 31:** Simonelli teaches mounting cameras in remote control racing cars. The cars move under the control of the observer. This moves the camera relative to the scene in response to the position signal. There is a receiver (32) and a transmitter (32). Fig 3 shows the portable controller for producing the position input signals in response to physical input signals provided by the observer – i.e., steering the car.

3. Claims 9-11 & 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simonelli & Yoshimatsu as applied to claim 7 above in view of official notice.

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**Claim 9:** Simonelli & Yoshimatsu teach the invention substantially as claimed including use of the device by those attending the event (i.e., race drivers) but does not teach renting the personal display units. Examiner takes official notice that the profit motive is well known. Renting the display units would allow the owner to make money off of the device. It would have been obvious to one of ordinary skill in the art at the time of the invention to have rented the personal display units to patrons in order to allow the owner to make a profit.

**Claims 10, 11, 33:** Simonelli & Yoshimatsu teach the invention substantially as claimed but do not teach transmitting closed wireless network communication signals corresponding to predetermined content different from the video signals produced by the cameras via the wireless communications system for selected alternative viewing by the attendees while at the event. Examiner takes official notice of the fact that displaying advertising is well known to those in the art. Ads are ubiquitous. Ads are also profitable. It would have been obvious to one of ordinary skill in the art at the time of the invention to have transmitted closed wireless network communication signals corresponding to predetermined content different from the video signals produced by the cameras via the wireless communications system for selected alternative viewing by the attendees while at the event (i.e., ads) in order to make money.

#### **(10) Response to Argument**

With respect to claim 7, Appellant argues that the prior art fails to teach “providing to a plurality of attendees at the event a respective plurality of portable display units containing a

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multi-channel receiving device and a video display device, the portable display units adapted to be worn or carried by the respective attendees."

Appellant does not dispute that Simonelli teaches the invention substantially as claimed. Appellant merely contends that the portable display devices (corresponding to Simonelli's video display units 22 & 24) are not worn or carried by the user. Examiner admits this fact. But Yoshimatsu teaches video goggles that are worn & carried by the user. Furthermore, any pair of video goggles must have a device that receives a video signal. That portion is, by definition, a receiver. Furthermore, since Yoshimatsu teaches a different signal for each screen in a binocular system (i.e., two signals), the receiver is multi-channel. This reads on Appellant's claimed invention.

Appellant, while not explicitly saying so, appears to wish "receiver" to be interpreted to be the same as Simonelli's receiver (32). But Appellant discloses that the corresponding receiver is element 56 in Appellant's Fig 1. Examiner does not interpret this to be part of the "display" device since the element 56 does not actually display anything and is separate from the actual display device (50). Examiner interprets "display device" to be headset (50), which Appellant describes as "A headset 50 contains video display devices 52, 54 positioned on the headset 50..." (PG-Pub paragraph 0023)

However, even if we adopt this interpretation of "receiver", it does not distinguish over the prior art. Simonelli clearly teaches a multi-channel receiver (32) that is attached to video displays (22 & 24). Just like Appellant's receiver (56), this receiver receives signals from sensors on the vehicle, including video cameras (122 & 124). It would have been obvious to one of ordinary skill in the art that any system that processed signals from the various sensors



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described by Simonelli would require such a receiver. The location of this receiver would not patentably distinguish over the prior art. The receiver would perform precisely the same function with eminently predictable results.

Appellant's arguments regarding freedom of personal movement are not commensurate in scope with the claims. Appellant simply has not claimed any such "freedom of personal movement."

Regarding claim 9, Appellant argues that it would not have been obvious to rent viewing devices to members of the public. Examiner must disagree. It is possible that a person implementing Simonelli's invention would allow the public to use it without charge out of the goodness of his heart. Examiner sincerely doubts that this is the case. Still, the Simonelli patent does not specifically mention charging people to use the device (i.e., renting the device to the users). However, Examiner feels that charging people to use such devices is so well known as to be notorious – the game arcade industry is based on this concept. This is how the industry functions. Without charging people to use the game devices, arcade operators could not stay in business. Examiner contends that it would have been obvious to one of ordinary skill in the art at the time of the invention to have charged people to use the device described by Simonelli (as modified by Yoshimatsu) in order to make a profit, thus enabling them to stay in business.

Appellant's argument about the prior art teaching away from the claimed invention "because the viewing location is fixed with the seat arrangement, and seats with less desirable viewing perspectives are normally sold at a lower price when compared with seats with seats of a more desirable viewing perspective" (Brief, page 7), does not seem to be based on the art applied in the current rejection. Neither Simonelli, nor Yoshimatsu describes the pricing structure

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contained in Appellant's argument. Therefore the argument is immaterial. It has nothing to do with whether the claimed invention is obvious over the APPLIED prior art.

But if there were prior art that taught the pricing structure argued by Appellant, it would not teach away from the claimed invention. It would, in fact, SUGGEST to one of ordinary skill that if people are willing to pay more to sit in seats with better viewing perspectives, they would be willing to rent devices that allowed them to see as if they were in a better seat, even if they could not physically occupy such a seat. After all, there are only a limited number of seats on the 50 yard line of a football game. Once these seats are sold, the stadium operator cannot sell more. But if the demand for seats on the 50 yard line is greater than the supply, that suggests that the management could make more money by renting devices that allow viewing the game from the 50 yard line perspective.

Thus, even if the Appellant's arguments had some bearing on the case, they would be fallacious.

Regarding claims 10 & 11, Applicant argues that the prior art does not transmitting "different content together with the camera views in order to allow the attendee to select for alternative viewing either a camera view or the different content." This argument is not commensurate in scope with the claims. The claims do not say who selects the different content – the attendee or the service provider. The fact that claim 11 further limits the content to advertising content bolsters Examiner's contention that the service provider may decide to supply this different content. After all, who would attend a football game, rent a viewing device, & choose to spend his time watching ads?

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On the other hand, providing advertising during sporting events is extremely well known. There is an economic incentive for the management to insert ads when there is a break in the action of the game (just like they do on broadcast television). It is certainly within the level of ordinary skill. The results would be highly predictable. And since people have been inserting ads into sporting events since the dawn of television, there are no hindsight issues. Therefore, Examiner cannot help but conclude that the claimed invention is obvious.

Regarding claim 33, this is a combination of well known elements yielding predictable results. One of ordinary skill would have known that advertising generates revenues. One of ordinary skill would have known that some people prefer to watch a game without ads & are willing to pay a higher price -- the cable TV industry has been selling premium channels without ads for decades. Other people will accept ads if they get a reduced price. By providing viewing devices at a reduced price to those who are willing to view ads, the service provider increases the number of devices he can rent. Plus, he gets the money generated by sale of the ads -- which more than makes up for the reduced rental rates. Thus there is an economic incentive for the person of ordinary skill to implement the claimed invention.

The claimed invention is within the level of ordinary skill. There are predictable results. And there is an economic incentive for the modification. Examiner concludes that the claimed invention is obvious.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Primary Examiner, Art Unit 3714

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